IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Bail Appl..No. 4032 of 2007()

CRIME NO.185/04 OF NEYYATTINKARA POLICE STATION.

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PETITIONER

V.SASIDHARAN NAIR, AGED 57 YEARS,
SREESAILAM, KOTTUKAL DESOM, PAYATTUVILA P.O.,
KOTTUKAL VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.RAJESH P.NAIR
SRI.T.RAJASEKHARAN NAIR

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4032 of 2007

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Dated this the 5th day of July, 2007

O R D E R

Application for anticipatory bail. Petitioner is the first accused in a crime registered as early as on 23.3.2004. The crime is seen registered under Sections 420 and 477 r/w. 34 I.P.C. Later, in the course of investigation specific allegation of forgery under Section 468 I.P.C. has also been alleged against the petitioner. Investigation is in progress. The petitioner has not been arrested so far. He now apprehends imminent arrest.

2. The crux of the allegations against the petitioner is that he had stood surety for another in a loan transaction with the K.S.F.E. There was default in payment of the loan. Action was initiated against the principal debtor and his sureties. There was an order passed for recovery of amounts from the salary of the petitioner. To avoid such recovery, the petitioner is alleged to have forged a letter making it appear that the Special Deputy Tahsildar had addressed his Controlling Officer, the District Educational Officer, not to recover any amount from him. Though the alleged incident took place in

September, 2003 and the crime was registered in 2004, the investigation does not appear to have made much progress. The petitioner has not been arrested so far.

3. The learned counsel for the petitioner submits that at this belated hour attempt is being made to vex and harass the petitioner. It is submitted that the petitioner is not in any way responsible for the forged document. The principal debtor had assured that the needful shall be done and the petitioner shall be saved of the inconvenience arising from the default in his payment. The contention hence is that the petitioner has absolutely no responsibility for the forged document sent to the drawing authority from the recovering authority.

4. The learned Prosecutor opposes the application. He submits that there are no circumstances justifying the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. It is submitted that the petitioner must make himself available for interrogation.

5. Considering the nature of the contentions, the learned Prosecutor was requested to place the case diary before the court for perusal. A perusal of the case diary shows that materials have been collected to indicate that the allegedly forged letter is made in the handwriting of the wife of the

petitioner at his request. At the moment and at the present stage, that circumstance knocks the bottom out of the theory that the forgery could have been made without the knowledge of the petitioner. I have seen the statement of the wife of the petitioner, which is available in the case diary.

6. I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I am convinced that this is not a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or deserves to be invoked in favour of the petitioner. The petitioner must appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the regular and ordinary course.

5. This application is hence dismissed. Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate having jurisdiction and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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